

H.E. NO. 2006-10

STATE OF NEW JERSEY  
BEFORE A HEARING EXAMINER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2005-073

CAMDEN EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Camden Board of Education violated 5.4a(3) and (1) of the Act by transferring two Association building representatives (teachers) from the H.H. Davis Elementary School to other district schools. The Hearing Examiner found that the Board engaged in other conduct in the 2003-04 school year which tended to interfere with protected rights in violation of 5.4a(1) of the Act. Finally, the Hearing Examiner recommended that the Board did not violate 5.4a(3) and (1) of the Act by transferring another Association building representative (teacher) from the Davis School to another district school, pursuant to evidence showing that the adverse action would have taken place in the absence of protected conduct.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Appearances:

For the Respondent, Sumners George, PC  
(Harold George, of Counsel)

For the Charging Party, Selikoff & Cohen  
(Keith Waldman, of Counsel)

**HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION**

On September 22, 2004, the Camden Education Association filed an unfair practice charge against the Camden Board of Education. The charge alleges that on August 10, 2004, the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by approving the transfer of teachers Karen Borrelli, Raeshell Carter and Patricia Nicgorski from the H.H. Davis Elementary School to three other district schools. The charge alleges that in the 2003-04 school year, all three were CEA "building representatives"; counseled CEA members on potential and pending grievances and on terms and conditions of employment; and engaged in protected activities on behalf of

themselves and others. The charge further alleges that the Davis School principal, Tina Rose Yuli, was aware of their protected conduct; openly hostile to it; and personally recommended the transfers. The Board's conduct allegedly violates 5.4a(1) and (3)<sup>1/</sup> of the Act.

On March 1, 2005, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On March 15, the Board filed an Answer admitting some allegations and denying others. The Board denies violating the Act.

On June 14 and 15 and August 1, 2005, I conducted a hearing at which the parties examined witnesses and presented exhibits. Post-hearing briefs were filed by October 11, 2005. A reply brief was filed on October 24.

Upon the record, I make the following:

FINDINGS OF FACT

1. The Camden Board of Education and the Camden Education Association signed a collective agreement extending from July 1, 2003 through June 30, 2006. The "recognition" provision defines

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<sup>1/</sup> These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

the negotiations unit as "all certificated personnel . . . including teachers; librarians; nurses; guidance counselors; social workers and [others]." Specifically excluded are the Superintendent and assistant superintendents; principals; vice principals; assistant principals and others (C-3).<sup>2/</sup>

Article III defines a "grievance" as "a complaint by a teacher or the Association that there has been to him a personal loss, injury or inconvenience because of a violation, misinterpretation or misapplication of this agreement." Any teacher is obligated to "discuss [the grievance] first with the principal or immediate supervisor . . ." The multi-step grievance procedure ends in binding arbitration (C-3). Article III also provides that grievants "at all stages of the grievance procedure" may represent "himself/herself" or may choose to be represented by a "representative selected or approved by the Association" (C-3).

2. Patricia Nicgorski has been employed as a teacher by the Board for many years (2T33). From 1993 to 2003, she taught sixth grade classes and "basic skills" at Davis Elementary School (1T39; 1T42). Beginning in September, 2003, she taught reading to fourth, fifth and sixth grades at Davis. Before the 2003-04

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<sup>2/</sup> "C" represents Commission exhibits; "CP" represents Charging Party exhibits; and "R" represents Respondent exhibits. "T" represents the transcript, preceded by a "1", "2", or "3", signifying the first, second or third day of hearing, followed by the page number(s).

school year, all of Nicgorski's annual performance evaluations were "good in every respect" (1T120). Before August 2004, Nicgorski had never been involuntarily transferred from one district school to another (1T42).

Nicgorski is a CEA member and has participated in collective negotiations on the organization's behalf since 1990 (1T43). She has been an Association "building representative" at Davis School since 1986 (1T44). Nicgorski's activities as a building representative variously included advising unit employees on Board access to personnel files; representing employees (including other CEA building representatives) at disciplinary meetings with Board representatives; discussing class "coverage" with the Davis School principal; filing grievances; organizing meetings of unit employees to discuss "communication among staff members and the administration," among other matters, etc. (1T56; 1T62; 1T66; 1T69; 1T82; 1T91).

Nicgorski is also a member of the Camden school district School Leadership Committee (SLC), comprised of elected and designated education professionals, local community members and parents of children attending selected Camden public schools, including David Elementary School (1T48). The SLC is responsible in part for managing the schools, pursuant to State Department of Education regulations issued in the wake of Abbott v. Burke, 100 N.J. 269 (1985), (N.J.A.C. 6A:24-1 et seq.) (1T43; 1T44; 1T48).

The Davis School principal is a member of the SLC (3T116). The CEA is not allocated a membership position in the SLC (3T57-3T59).

3. In June, 2003, Davis School principal Frances Gavin retired from the district (1T48; 2T36). In or around August, 2003, the SLC, including Nicgorski, conducted interviews of about fifteen candidates to succeed Gavin (2T37). The SLC prepared a list of five "finalists" in order of preference and gave it to Board Superintendent Annette Knox for a final selection. Candidate Tina Rose Yuli was not among them (1T49). She was nevertheless selected as principal of Davis School (1T50). The SLC consulted the Education Law Center and the NJEA and contested the propriety of the selection under Abbott regulations in letters to the Commissioner of Education and then-Governor McGreevey (1T50-1T51). The SLC decided not to formally appeal the selection (1T54). Nicgorski did not express her displeasure to the Superintendent in a meeting soon after learning of Yuli's appointment (2T41).

4. Karen Borrelli has been employed as a health and physical education teacher by the Board for more than 20 years (2T164). Borrelli was assigned to Davis School from September 2002 or earlier to August 10, 2004. She has also been a CEA building representative continuously for twelve years, including at least the two years at Davis (2T166). In September, 2003,

Borrelli was chosen as a member of the SLC, though she did not participate in either the selection process for a new Davis School principal or the Committee's objecting to the Superintendent's designation of Yuli for the post (2T167; 2T168).

The parties stipulated that all of Borrelli's teacher evaluations were "satisfactory" until the 2003-04 school year (2T165). No 2003-04 teacher evaluation of Borrelli was proffered.

5. Raeshell Carter was employed as a teacher at the Davis School from 2000 through August 10, 2004. She taught third grade students during her first three years and first grade students in the 2003-04 school year (2T93; 2T132). Carter testified that she was a CEA building representative during her first three years at Davis (2T93). She then testified that she was a building representative in the 2003-04 school year (2T93). Her testimony was undercut by CEA vice president Nicholas Timpanelli, who testified that in the 2002-03 school year, the CEA building representatives at Davis School were "Ms. Nicgorski, Ms. Borrelli, and sometimes Ms. Carter" (1T13). Timpanelli was next asked if Tina Rose Yuli was the Davis School principal ". . . during that time period", to which he answered, "yes" (1T13). Yuli was designated principal of Davis School in August, 2003 (see finding no. 6). I infer that Timpanelli meant that in the 2003-04 school year, CEA building representatives at Davis School

were "Ms. Nicgorski, Ms. Borrelli, and sometimes Ms. Carter." Nothing in the record explains the mechanics of or procedures by which a unit employee occasionally serves as a CEA building representative. Nor does the record show that Carter represented another unit employee in any grievance matter or dispute with a Board representative. The parties stipulated that all of Carter's teacher evaluations in her personnel file are "satisfactory in every respect" (2T92-93).

6. Tina Rose Yuli was hired as principal of Davis Elementary School in August, 2003. She was previously employed for 20 years in the New York City public schools as a teacher and assistant principal (3T113). At the time of Yuli's arrival, Davis was considered a "low performing" school, pursuant to Abbott terminology (1T114). About 45 classroom teachers worked at Davis School in the 2003-2004 school year (3T166). Sometime in September, Yuli first learned about the SLC from the Board and was informed that as principal she automatically became a member, pursuant to Abbott regulations (3T116). She also learned that the SLC had met without her earlier in the month and had elected a "chairperson"--a "community member" without children attending a district school--in violation of Abbott regulations (3T117). Yuli "disbanded" the SLC, according to Nicgorski and Borrelli. I find that the SLC continued to perform its intended functions,



albeit with different officers or members beginning in September or October of 2003 (1T58; 3T59; 3T118).

7. On September 17, 2003, Carter attended a faculty meeting of Davis School kindergarten and first grade teachers conducted by Yuli (2T96; CP-18(a)). During the meeting, Carter asked Yuli for "accommodations" because her "medical condition" made climbing and descending stairs difficult (2T92; CP-18(a)). Carter had "tried to communicate" with Yuli about an "accommodation" to no avail several times earlier in the month (2T97).

On September 22, Yuli wrote a two-paragraph letter to Carter which also solicited an acknowledgment--by Carter's anticipated signature in a designated space--that the document was to be placed in her personnel file (CP-18(a)). Yuli wrote in a pertinent part:

You asked initially if I could have special area teachers come to your class on the 2nd floor, since your children in your opinion get tired from going up and down the stairs. I responded that special area teachers could not come to you [and that] children in first grade . . . are quite able to go up and down [the stairs] . . . You then stated 'that the problem was really with you and you were too tired from going up and down.' [CP-18(a)]

The next day, September 23, Carter wrote a letter to Yuli, contesting Yuli's written version of events during the meeting. Reiterating that she has been ". . . given access to the elevator, wore sneakers to work . . . and allowed to leave work

early for monthly doctor appointments. . .", Carter wrote that "no one has ever questioned my ability to perform my teaching responsibilities until now." Carter also wrote that she had personally "voiced her concerns about [her] schedule" to Yuli on September 10, and had requested the assistance of an instructional aide. Carter also wrote a request that Yuli remove the September 22 letter from her personnel file. Finally, she wrote, questioning Yuli rhetorically, "Why ask me for staff comments/concerns if you're going to turn them around and use them against me?" (CP-18(b); 2T102).

On September 25, Carter and Yuli discussed the request for "reasonable accommodation." Yuli mentioned that she did not have Carter's "medical note" and that the instructional assistant who would have been assigned to assist her was on a medical leave of absence (2T111).

8. Sometime in September, 2003, Yuli distributed copies of an authorization form to unit employees, seeking their permission to place memoranda regarding their absences and other unspecified items in their personnel files (1T55). Some unit employees advised CEA building representative Nicgorski of the solicitation. She advised them not to sign the forms (1T55).

9. On September 29, 2003, Borrelli completed and submitted an "Overnight Field Trip Request Form," together with other related documents to the Board for approval (3T108; R-2). The

form sought Board approval to transport, feed and lodge 20 "4th through 11th" grade students competing in hockey at the Special Olympics State Games in Parsippany from February 7 to 9, 2004 (R-2). Identifying herself on the form as the trip's "sponsor," Borrelli wrote that the costs of food and lodging were to be paid by "Special Olympics NJ." She was actually a team coach (3T82).

Assistant Superintendent for Administration and Support Services Fred Reiss received the form and promptly returned it to Borrelli because it was not signed by Principal Yuli in the allocated space (3T182). Borrelli presented it to Yuli. They spoke about it "briefly"; Borrelli said, "We take children for the Special Olympics" and Yuli said, "Okay" and signed it. Yuli admitted: "I didn't ask any other questions because it seemed like it was a Davis School activity, so I assumed they were children from my building" (3T120). Borrelli returned the signed form to Reiss, who also signed it and forwarded it to the Superintendent (3T182).

Davis Elementary School houses kindergarten through sixth grade students (3T193). Asked on cross-examination if Borrelli's writing of "4th through 11th" in the space provided to "grades participating" on the form meant that students in "7th, 8th, 9th, 10th and 11th grades" could be going on the trip, Reiss testified: "As I recall, I felt that was just a typo and it was sent back to Ms. Borrelli for making changes" (3T193). Nothing

in the record indicates that Borrelli was asked to change an entry on the form before Reiss approved it upon his second viewing. In February 2004, she was asked to name all team members (see finding no. 23).

Borrelli admitted that no then-current Davis School students were members of the hockey team in the 2003-2004 school year (3T83). She testified that in February 2004, she informed a Board representative that none of the team members were current Davis School students (3T87). I infer that Borrelli did not disclose that specific fact throughout the fall of 2003.

10. On September 30, 2003, Borrelli attended an open session Board meeting and spoke publicly against Yuli's disbanding of the SLC (2T169). She testified that after the meeting, "Yuli . . . commented to staff about how [other] staff members spoke about her at Board meetings . . . [Yuli] made numerous comments to that effect at faculty meetings in my presence" (2T169).

Yuli did not deny remarking her acknowledgment or disapproval to staff after the September 30 meeting. I credit Borrelli's testimony.

11. On October 9, 2003, Carter wrote and filed two "employee grievances" with vice-principal Joan Spencer-Champagne. In one grievance, Carter contested a teaching assignment without

"written notice" and alleged racial discrimination in her assignment to teach the fifth grade (CP-18(c); 2T102).

In the second filing, Carter wrote that she was ". . . discriminated against, harassed and denied reasonable workplace accommodations." She wrote that a month earlier she met with Yuli and requested an instructional assistant and the visitation of "special area" teachers to her classroom to avoid her having to walk up and down the stairs. She wrote that on September 25, Yuli again mentioned concerns "about [Carter's] ability to perform [her] job. . ." (CP-18(d)).

12. On October 16, 2003, Yuli wrote a letter (to an unspecified administrator), advising that Carter has not been "harassed or discriminated against." She wrote that only "medical documentation" can verify Carter's claim for "workplace accommodations." She also wrote that an instructional assistant assigned to Carter had been absent and that Carter was never told that "she could not have an instructional assistant" (CP-18(e)).

13. On October 19, 2003, Carter filed two grievances. One grievance specified that an article of the parties' collective agreement was violated, together with "Title I of the ADA" (Americans with Disabilities Act). The other grievance specified only violations of other contract provisions and sought reassignment to a "former position" (CP-18(f) and (g)). Yuli promptly denied both grievances (CP-18(f) and (g)).

On October 23 and 24, 2003, Carter wrote letters to Board Superintendent Annette Knox, protesting Yuli's assertedly-late grievance responses and complaining of Yuli's conduct. The October 23 letter, entitled "employee grievance," recounts an October 15 meeting with Yuli at which the principal told her that she was "teaching reading wrong" and intended to assign a reading specialist to assist her "because I clearly don't know what I'm doing." Yuli had visited Carter's classroom and observed her teaching three or four times in the early part of the school year (2T107). Carter testified that in the October 15 meeting (at which she was represented by Nicgorski), Yuli ". . . attacked my techniques as a teacher, telling me I didn't know what I was doing . . . [that] I was teaching the lesson wrong . . ." (2T107). I credit her testimony.

Carter also wrote in her October 23 letter that despite her own "legitimate medical condition," Yuli ". . . continues to harass me by saying things like, 'You don't look like you're disabled. You can't tell by just looking at you.'" Carter requested that the Superintendent "accept her two written grievances and render a fair decision" (CP-18(g)).

In her October 24 letter, Carter wrote that Yuli's late grievance responses were "null and void," pursuant to a timetable set forth in the collective agreement. She also wrote about the merits of her teaching assignment grievance and "claim[ed]"

discrimination based on race . . .” Carter wrote: “I have been displaced and inconvenienced enough this year. I don’t want to be transferred to another school<sup>3/</sup> and I hope and pray that this matter can be resolved without any further hardship” (CP-18(h)).

On October 27, Board Superintendent Annette Knox wrote a letter to Carter, replying to her “October 10” letter. Knox wrote that workplace accommodations “must be accessed through the [Disabilities Act] process” and accommodations provided by a “previous principal” are “not binding” unless “documented through the process” (CP-18(I)).

14. On October 22, 2003, two unit employees anticipating possible discipline for an employment-related matter asked Borrelli to represent them. One employee gave Borrelli a form or document which Davis School vice principal Spencer-Champagne had given her directly and demanded its return, signed (1T59; 2T170). Borrelli, in turn, presented the document to Nicgorski for her review on behalf of the Association. After a short time passed, Spencer-Champagne, unaware of the form’s migration, demanded the (presumably signed) document back from the unit employee, who

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3/ Carter testified without contradiction that at the beginning of the 2003-04 school year, she was reassigned to a class or grade adjacent to the room where she had taught the previous school year. She testified: “I was told that if I didn’t like the move or change in grade level, that I could change that, I can transfer; that was my choice” (2T106). I infer from the context of Carter’s testimony that Yuli was the unspecified Board representative who provided the “option.” I credit Carter’s testimony.

replied that she had given it to Borrelli. Spencer-Champagne demanded Borrelli to return it. Borrelli replied that she had given it to Nicgorski and was waiting to hear from her. She gave Spencer-Champagne a copy of an unspecified contract provision, to which the administrator angrily insisted that "downtown" needed the signed document "right now." Borrelli replied that the unit employees would sign the documents after they were "reviewed and okayed" (2T170; 2T171). Borrelli also mentioned that one of the aggrieved employees had solicited her assistance as a "representative" (2T172).

Later that day, Spencer-Champagne entered Nicgorski's classroom and asked the representative for the form and Borrelli's whereabouts. Spencer-Champagne remarked to Nicgorski: "I am getting tired of all this nonsense" (1T62). Nicgorski told the administrator that Borrelli had returned to her own classroom. The record does not show the location of the forms at the time of Spencer-Champagne's visit to Nicgorski's class. I infer that Nicgorski had inspected and returned the forms to Borrelli by the afternoon of October 22 (2T42).

Later that day, around 3 p.m., Borrelli was served an unrelated notice of suspension, pursuant to a student complaint (1T63; 2T172; 2T173; 3T200). At or around that time, Nicgorski spoke with principal Yuli. Yuli asked Nicgorski why Borrelli had possession of the forms that Spencer asked the unit employees to



sign. Nicgorski replied that "Borrelli was a building representative" (1T68; 2T42). Yuli also questioned Nicgorski: "Why is it that Borrelli needs a representative if she is a representative"? (1T65). Nicgorski replied: "As a representative, you can have a representative in a meeting concerning disciplinary actions or if you have a feeling that it can affect your job in some way" (1T65-1T66).

Borrelli's suspension was rescinded by the Board in December, 2003, pursuant to an investigation. The notice and other Board documents pertaining to the suspension were expunged from Borrelli's personnel file (2T175; 3T34; 3T200).

15. On October 31, 2003, during her lunch period, Carter spoke with CEA President Claraliene Gordon in the CEA office. While Carter was present, Gordon telephoned Yuli and they spoke about Carter's pending grievances. The CEA president mentioned to Yuli that Carter was in the CEA office and would be "a few minutes late coming back from lunch" (2T114). On November 3, 2003, Yuli wrote a letter to Carter, admonishing her for returning 15 minutes late from lunch on October 31. She wrote that if Carter would be late returning to work in the future, she should ". . . at the very least, please call and let the school know" (CP-18(j)). Carter does not dispute that she returned late from the CEA office.

Sometime in November, 2003, Carter received a written reprimand for her absences from work (2T118). She estimated that in the 2003-2004 school year, she was absent more than ten days (2T118).

16. On or around November 25, 2003, Nicgorski represented a Davis School teacher in a meeting with Yuli regarding the teacher's performance evaluation. The teacher had requested the meeting to complain about the evaluation and asked Nicgorski to accompany her. The teacher and Yuli argued and by the meeting's end, Yuli scuttled the evaluation. Nicgorski was permitted to "perform her union representative duties" (1T66; 1T67; 2T45; 2T46).

In December, 2003, Nicgorski represented another unit employee on a grievance contesting the marker-highlighting of the employee's name on a daily sign-in sheet. Names of late-arriving unit employees were assertedly highlighted by a Board representative, despite a purported rule or an agreement prohibiting the practice (1T69-1T70; 2T55-2T56).

Also in December, Nicgorski discussed with Yuli the matter of instructional assistants assertedly not receiving their designated amount(s) of preparation time (1T68-1T69; 2T53). On another unspecified date in December 2003, Board Assistant Superintendent for Administration and Support Services Fred Reiss issued a listing of "field trips in the 2003-04 school year" to

the Superintendent (R-3; 3T183). One listing was for the "Special Olympics State Games" in Parsippany, originating at the Davis School, with an account number and a projected "transportation" cost of \$950.00 (R-3; 3T183).

17. On or about January 29, 2004, Borrelli publicly expressed several concerns on behalf of the Association during an open session Board meeting. She protested that the Association was not previously informed of an announced after-school program for students; she contested the assignment of several Association members; and stated that the SLC ". . . was not following budget procedures" (2T176-2T178).

Borrelli testified that the next day, Friday, January 30, a Ms. Sey, another physical education teacher at Davis School, told her that Yuli had remarked (to her): "Borrelli ragged on me again at the Board meeting last night" (2T178-2T179).

Yuli testified that she said [to the teacher]: "Borrelli spoke about me at the Board meeting." She denied saying: "Borrelli ragged on me." Yuli conceded that the context of her remark was that "[Borrelli] had spoken in a not-so-nice--she didn't say nice things about me" (3T156; 3T157).

Borrelli testified that she and Yuli met after school hours on January 30 and that she said: "Ms. Yuli, I did not rag about you at the Board meeting last night." She testified that Yuli replied: "That's not what I heard," and that she retorted: "In

fact, I didn't even mention your name. How would you know what I said?" Borrelli testified that Yuli answered that another person had told her (2T181). Yuli did not generally or specifically deny this portion of her conversation with Borrelli after school hours on January 31. I do not credit Yuli's testimony about her remark to Sey, given its admitted context and that she did not deny the January 31 conversation with Borrelli. Yuli would not likely neutrally report an implied criticism of her SLC leadership. I infer that "ragged" means "complained." I credit Borrelli's testimony.

18. In their January 30 after-school meeting, Borrelli and Yuli also discussed the annual and upcoming Valentine's Day Dance at the Davis School. Students had been selling and buying tickets for the scheduled mid-day event for at least two weeks (2T179; 3T133). Borrelli had assisted in the preparations. Yuli expressed doubts about permitting the dance during "instructional" hours in the "low-performing" school (3T66; 3T133). She proposed to Borrelli the possibility of rescheduling the dance from about 12:30 p.m.-2:30 p.m. to 3 p.m.-5 p.m. (CP-22; 2T180; 3T133).

Yuli also remarked that the students danced "too provocatively" (2T180; CP-22). Yuli replied: "How would you know? . . . Why don't we give them a chance?" (2T180). Borrelli testified that ". . . children had been selling tickets for [the

dance] at lunch for weeks. [Yuli] wanted to cancel it with just a week-and-one-half to go. I asked her why." I infer that Borrelli was displeased by Yuli's stated inclination and that her question(s) and/or tone indicated as much.

Yuli asked Borrelli to consider the rescheduling over the weekend and recommended their further discussion on the following Monday (2T180).

On February 2, 2004, Borrelli gave Yuli a memorandum regarding "[her] request to change dance time" (CP-22). Borrelli wrote of her "reservations" about a change because of safety and supervision concerns. She wrote that the scheduled dance is a "constructive outlet" for students and protested the "inhibitions" of adults claiming that the children dance "provocatively." Borrelli "requested" that Yuli "reconsider" her decision but volunteered ". . . with much sadness to formulate a letter to students and parents [reflecting her decision to reschedule or cancel the dance] and submit it for [her] approval" (CP-22). Borrelli testified that her memorandum recommended that Yuli "keep the dance during school hours . . . or [cancel it]" (2T182).

Yuli testified that she became concerned about security for the students if the dance was rescheduled to 3 p.m. and continued to believe that it should not be scheduled during school hours.

Yuli determined to cancel the dance (3T133; 3T134). I credit her testimony.

19. On February 2, sometime before noon, Yuli informed Borrelli that the Valentine's Day Dance was cancelled (2T182). Borrelli promptly advised an unspecified number of students in Nicgorski's classroom that the dance was cancelled and they should stop selling tickets (2T182-1T183, 2T184; 3T71; 3T105). Borrelli conceded on the record that the cancellation accorded with Board "policy" that "instructional hours" should be used for instruction (3T67; 3T188). Borrelli also testified that she was unaware of the policy until March, 2004 or later (3T66). I credit her testimony.

20. On February 3, around noon, an unspecified number of students were gathered in the Davis School auditorium, where they were informed of the dance cancellation. Borrelli wrote (about 10 days later in a letter to Assistant Superintendent Reiss) and testified that the assembled students were questioned about the circumstances of their having been informed of the cancellation on the previous day (2T185; CP-22). Borrelli also testified that some parents of students had phoned the Board that morning to inquire or complain about the cancellation (2T184). Yuli and Reiss did not deny Borrelli's testimony or rebut her February 13 writing. I credit Borrelli's testimony.

Also on February 3, Yuli received an unspecified number of handwritten letters from Davis School students protesting the dance cancellation (3T134). Reiss wrote in a pertinent portion of a February 3 letter to Borrelli:

[Yesterday] you interrupted instructional literacy time to tell the children that the dance was cancelled because the dancing was too risque. Additionally, based on the letters sent to Ms. Yuli by the students, you advised them that they could write in protest to the principal. [CP-21]

Borrelli testified in rebuttal that she did not invite students to write letters to Yuli (3T205). She testified that Yuli solicited the letters from students on February 3 while they were assembled in the auditorium and asked to ". . . write down what happened when Ms. Borrelli went up to Ms. Nicgorski's room" (3T205). Borrelli's testimony is at odds with the only student letter submitted by the Board, which provides in a pertinent part: "Also [Ms. Borrelli] said we should write a letter or petition to get the dance back" (R-1).

Yuli testified that she received students' letters before she ". . . had [ ] told anyone that [the dance] was cancelled" (3T134). I do not credit the literal meaning of Yuli's testimony because she informed Borrelli on February 2 (the previous day) that the dance was cancelled. I infer that "anyone" means Davis School students and that she received their letters before noon on February 3, 2004.

No non-hearsay evidence rebuts Yuli's testimony that she received student protest letters before the assembly in the auditorium. Borrelli did not testify that she attended Yuli's February 3 meeting with students in the auditorium. Her testimony that Yuli solicited the letters is at least double hearsay. Accordingly, I credit Yuli's testimony that she received student letters before announcing the dance cancellation. I also infer that Reiss had a good faith belief that Borrelli invited students to "write in protest to the principal" (CP-21).

21. Borrelli testified that on February 2, 2004, she attended a meeting with Assistant Superintendent of Administration and Support Services Fred Reiss, the CEA president and vice-president (2T185; 3T8). Her testimony about the date of the meeting is contradicted by her letter to Reiss, dated February 13, 2004, in which she wrote in a pertinent part: "You are correct that we met on Tuesday, February 3, 2004." I infer that Borrelli's relatively contemporaneous writing about the meeting date is more reliable than her memory of it. Borrelli also wrote that she met with Yuli on January 30 and on February 2, immediately after which she advised students about the cancellation. The latter ascribed dates are corroborated by Borrelli's and Yuli's testimonies. Accordingly, I find that the date of the meeting of Association and Board representatives was



February 3, 2004. I also find that Board representatives Yuli and Spencer-Champagne attended the meeting, in addition to those whom Borrelli attested (CP-21). Borrelli asked Nicgorski to accompany her as her union representative but Nicgorski was not permitted to attend the meeting (2T65; 2T66).

In the meeting, which concerned the cancelled dance, Reiss reiterated the policy that instructional hours must be used for instruction (3T188). He testified that he "learned" that Yuli had cancelled the dance and that "one or more teachers did not support that decision and went to students to try to get them to change the principal's mind" (3T187). I infer that Reiss was referring to Borrelli and alluding to Nicgorski. Borrelli testified that Reiss asked her if she understood the "procedures of the dance" to which she replied, "Yes, there is no question that Ms. Yuli had cancelled the dance" (2T185). I infer that Reiss's remarks were intended to remind Borrelli that Yuli (and not she) represented administrative authority at Davis School.

Borrelli testified that Reiss also mentioned her appearance before the Board on January 29 and told her that "if [she] was that unhappy, [she] should consider transferring [to another school]" (2T185-186). Borrelli replied that she was not unhappy and enjoyed teaching at Davis and that her remarks to the Board were spoken on behalf of "her members" (2T186). Borrelli's testimony is corroborated in part by Reiss's February 3 letter,

which advises of her "right to transfer . . . if [she] is unhappy." Borrelli testified that she never requested a transfer from Davis School and never stated to Reiss that she was unhappy. I credit Borrelli's testimony.

Reiss did not testify that he attended the January 29 Board meeting. I infer that he learned of Borrelli's remarks at the session from Yuli (whose knowledge was based upon hearsay). I also infer that he approved of the notion of transferring "unhappy" teachers, i.e., teachers who complained about the administration of Davis School, including terms and conditions of employment.

22. Patricia Nicgorski testified that on February 3, after the meeting attended by Reiss, Borrelli, and others, she spoke privately with Yuli about "union activities that day, of previous things that had occurred" (2T63; 2T68). I find that they discussed events set forth in finding nos. 20 and 21. She testified that Yuli said: "I cannot be objective about Ms. Borrelli"; that she had been "watching Borrelli since September"; that she [Nicgorski] and Borrelli were "aligned"; and that "if [their] alignment continued, [they] would find themselves in trouble" (2T58; 2T63). Nicgorski testified that she and Borrelli had "worked together" as teachers on some student teaching "projects" and as union representatives (1T73; 2T85). Nicgorski

testified that Yuli made no mention of any "project" in their conversation that day (2T85).

Principal Yuli testified that she "did not recall" saying to Nicgorski that she and Borrelli were "aligned" and that "if the alignment continued, they would be in trouble" (3T156). Yuli answered some other questions on cross-examination by stating that she "did not recall", and once distinguished that answer from a denial (3T159). I infer from Yuli's specific response and from her cross-examination responses generally, that she meant that she did not remember if she said the purported remarks to Nicgorski on February 3, 2004. I credit Nicgorski's testimony.

I find that Yuli's remarks to Nicgorski were prompted by her knowledge of Borrelli's visit to Nicgorski's classroom the previous day to announce the dance cancellation. I infer that "alignment" is suggestive of a general observation and refers to Nicgorski's and Borrelli's Association activities over the period of time that Yuli had been Davis School principal (e.g., finding no. 14). Yuli implied as much by saying that she had "watched Borrelli since September." Of course, the "alignment" was oppositional to Yuli, having been coupled with a threat of "trouble." I do not find that Yuli was referring to their cooperative teaching; such a remark has no context on this record.

23. Also on February 3, 2004, Yuli issued to Borrelli a memorandum regarding the "Davis Dragon Special Olympic Floor Hockey Team" (R-4; 3T127-3T128). On Reiss's demand, Yuli requested a list of names of the team members from Borrelli (3T126). Borrelli wrote the list on the memorandum and returned it to Yuli. No then-current Davis School students were members of the team (R-4; 3T128). (Yuli had seen a "statement" page from the December, 2003 Superintendent's Report listing a \$950 allocation to the Davis School (see finding no. 16)).

On February 4, Reiss issued a memorandum to Yuli and Borrelli regarding the "Special Olympics Trip" (R-7; 3T186). The memorandum confirms that "not a single Davis student" is listed on the team roster. Reiss wrote:

When the Board approved this trip it was with the understanding that it was for 20 Davis School students . . . [It] thereby allowed Davis School's whole-school reform money to be used for this purpose. No permission was ever granted for Ms. Borrelli to be excused from school to take children from other Camden schools and other school districts, using Davis School's money to the Special Olympics February 7-9, 2004.

The bus and the trip are cancelled.  
[R-7]

Borrelli testified that "nobody ever said that there were 20 Davis students [going on the trip]" (3T84). She conceded that the team was comprised of former Davis School pupils (3T97). She testified that she had spoken "numerous times" with a Board

member--a Mr. Sykes--". . . about the different items that we needed, specifically about the different students involved, so it was no secret that none of the members were [ ] from Davis School" (3T88). I credit Borrelli's testimony that she spoke to a Board member about trip details.

In fact, the trip was not cancelled. Reiss met with Borrelli sometime on February 5 or 6 and told her that ". . . if she could fund the trip . . . find external funding [\$950] . . . I would consider . . . allowing her . . . to go on her trip" (3T186). Borrelli accompanied the students to Piscataway because the costs became underwritten by a privately-owned entity (3T95; 3T186). Borrelli was paid her salary while attending the competition (3T187).

24. Nicgorski testified that sometime in February, 2004, she accompanied a teacher, a Mr. Lawson, to a meeting with Yuli. Lawson had left his lesson plan and grade book at home. Nicgorski testified that one of Yuli's remarks was that Lawson "could transfer out", which was memorialized in a (disciplinary) memorandum (1T112). Yuli did not deny Nicgorski's testimony. Nicgorski also testified that teacher Lawson was a CEA building representative in 2003-04 (1T113). On cross-examination, Nicgorski did not include Lawson in her recital of all CEA building representatives at Davis School in the 2003-04 school year (2T76). I credit Nicgorski's testimony about Yuli's remark

to Lawson in the meeting. I do not find that Lawson was a CEA representative in 2003-04.

25. On March 18, 2004, at the end of the school day, Yuli announced over the school speaker system: "I want all CEA reps in my office now" (1T73; 3T15). Several people promptly assembled in Yuli's office, including the principal, Spencer-Champagne, Nicgorski and Borrelli (1T74; 2T15; 3T165). No evidence indicates that Carter attended the meeting; Yuli testified that she was not present (3T165). I find that Carter did not attend.

Borrelli and Nicgorski testified that during that week, a CEA and Board-sponsored "Teacher of the Year" election was underway, and that Yuli was "agitated with the way the proceedings had gone" (1T73; 3T16). They each testified that in the office, Yuli "screamed" and "hollered": "You reps are not in control [of the building] anymore" and "You have to get your act together; you're hurting the children!" Nicgorski asked Yuli how the children were being harmed to which Yuli yelled, "You're hurting the children! You're out of control and I'm calling [CEA officers] Sharon Allen and Claraliene Gordon in tomorrow because you're out of control!" (1T74; 3T16). Nicgorski testified that Yuli "pounded her hands on the desk" and "crawled across it [while] hollering at me" (1T74). Borrelli testified that a teacher knocked on the office door from the adjoining room,

opened it and said that the parents, students and staff in the outer office heard the commotion because it was "really loud" (3T17).

Yuli testified that she did not remember saying in the March 18 meeting in her office, "[You] reps are out of control" (3T156). She recalled announcing to staff over the speaker system that afternoon: "All reps come down" (3T165). She denied that her voice was the only one "raised" in her office. She testified that "everyone was excited and trying to stress their opinion . . . everyone's voice was loud, including mine" (3T150). She also denied climbing on her desk and placing her foot on it (3T173-3T174).

I credit Nicgorski's and Borrelli's testimonies (with one minor exception), which were specific, detailed, and separately and mutually consistent. I do not credit Yuli's testimony about the March 18 meeting in her office. Her clear memory of her announcement over the speaker system does not jibe with an apparent lack of memory about her (accusatory) remarks a short time later. Her testimony overall about the meeting is vague; her testimony that "other voices" were raised lacks specificity. Borrelli did not corroborate Nicgorski's testimony that Yuli "crawled across the desk"; I do not find that the Principal did.

26. On March 19, 2004, Yuli wrote a memorandum and gave it to her immediate supervisor, Assistant Superintendent Jan Gillespie-Walton (3T142; 3T144; R-5). Yuli wrote that she was ". . . strongly recommend[ing that] the following staff members be included in the restructuring process:" (R-5). Yuli wrote a list of the names of eleven Davis School teachers (together with their assigned areas of instruction) in no apparent order, except that Nicgorski, Borrelli and Carter were the first three listed (R-5).

Yuli was asked to define "restructuring process." She testified:

From the very beginning, when I took over Davis, we restructured the way children would receive the services. I put in a departmental program in fourth, fifth and sixth grade[s]. We moved a lot of teachers around. Things were constantly being restructured as the year went on . . . We needed to have improvement by the end of the year. [3T143]

I cannot discern a precise meaning of her sentence; "We moved a lot of teachers around." Yuli testified that as she began to "move the building forward" and address its instructional needs, management and day-to-day operations,

it became more obvious that there was a group of people that seemed not to want to support the decisions that were being made about instruction, teachers, overall instruction and I voiced those concerns to the assistant superintendent. [3T142]



I infer that Yuli was the author or initiator of the "decisions being made." Yuli did not more specifically define or describe those decisions pertaining to "instruction" or "teachers" or the manner in which the decisions were not "supported." I infer that she recommended the transfer of eleven teachers from Davis School (see esp. finding no. 34).

27. Nicgorski credibly testified that "the problem of [student] discipline during lunch time" was discussed in a March, 2004 SLC meeting (1T75). Her concern as a CEA representative was that instructional assistants (i.e., non-certificated personnel included in the negotiations unit) "should not be alone with students" (1T75). Nicgorski testified that in a staff meeting later in the month, Yuli announced that two named staff members would soon be assigned to oversee the "detention room" (1T76). Her testimony was unrebutted; I credit it.

On March 23, Nicgorski observed a Ms. Patrick, an instructional assistant, in a classroom supervising students assigned to a lunch period detention (1T76). Patrick had previously spoken with Nicgorski regarding the detention room (2T72). Nicgorski inquired of Patrick the whereabouts of the "second" or certificated employee. Patrick said that the "second," a Ms. Villerini, was "sub[stitute] teaching in another class" (1T76; CP-2). Nicgorski testified that she returned to her classroom and at about 2:20 p.m., Principal Yuli ordered her

to report to her office. Spencer-Champagne was present when Nicgorski entered the office. Yuli told Nicgorski that she had observed her emerging from the detention room (2T71). Nicgorski testified that Yuli:

. . . proceeded to scream and yell about how it is not my business; I am not a supervisory person; that I am not to ask any CEA members any questions; I am only to address issues that they come to me with; I am not allowed to ask them questions; and that she already checked this with [CEA president] Ms. Gordon and, 'do I understand it'? She was screaming at me. [1T76-1T77]

Nicgorski memorialized these events in a memorandum issued to Yuli on the same date (CP-2). The two-page memorandum sets forth in detail the events of March 23 and corroborates Nicgorski's testimony. Specifically, the memorandum corroborates Nicgorski's testimony that Yuli told her that she "was not allowed to check in or check on staff members" and that "your union business can only be done if a staff member goes to you." (CP-2). Nicgorski also wrote: "As a CEA rep., my concerns included: place of detention, payment, and protection for herself. She needed a certificated person in the room with her, especially if a child accuses her of something (this had already happened 3 times in the building)." (CP-2).

Yuli testified that she was "upset" by Nicgorski's involvement in the matter of instructional assistants staffing a classroom without a certificated employee present (3T151). She

conceded that she told Nicgorski that ". . . as a rep [you] should represent them when they find that they've been violated against and not seek out violations" (3T152). On cross-examination, Yuli initially denied saying to Nicgorski ". . . only when they come to you" in defining her duties as a CEA representative (3T152). She answered, "I don't recall" to a substantially identical follow-up question (3T153). Considering Nicgorski's testimony, and her contemporaneous memorandum; Yuli's anger at Nicgorski for her attention to the matter; her admitted remark, and shifting replies to the same question about her contested remark to Nicgorski, I do not credit Yuli's denial. I credit Nicgorski's testimony.

On March 26, Nicgorski was called to Yuli's office. Instructional assistant Patrick was present. Yuli said that she wanted to discuss the March 23 incident regarding Patrick. Nicgorski said that she would not discuss the matter without an NJEA representative in attendance. Yuli ended the meeting (1T79-1T80). Later that day, Yuli wrote a letter to Nicgorski about their March 23 meeting. She wrote in a pertinent part:

At th[e] meeting with myself, Ms. Champagne and you, I directed you to never question my staff regarding their work assignment, as you are not an administrator in my building. As principal, I am the only manager of Davis School. Furthermore, I reminded you that as a CEA rep at Davis School, you are here to represent staff in a disciplinary conference or when I have violated their contract.

Your actions represent insubordination and this letter is a warning that your unprofessional behavior may lead to disciplinary action. [CP-3]

On March 30, Nicgorski issued a three-page "rebuttal" memorandum to Yuli regarding her "insubordination" letter (CP-4). Nicgorski wrote that the March 26 letter was "confusing." She wrote a detailed chronology of events on March 23 and 26, 2004. In the memorandum, Nicgorski denied that she was insubordinate and wrote several alternate definitions of the word. She also denied that her conduct was "unprofessional" and accused Yuli of defamation (CP-4).

On March 31, Nicgorski met with CEA vice president and grievance chair Nicholas Timpanelli and discussed a possible grievance filing regarding Yuli's written warning to her (1T82). On April 1, 2004, Nicgorski gave Yuli a letter requesting a meeting the next day to discuss the written warning. She also told Yuli that Timpanelli would attend. Nicgorski did not receive a response and never met with Yuli regarding the grievance (1T82).

28. On April 1, 2004, the CEA conducted a meeting at Davis School and solicited from members anonymously written "concerns" about school problems. The submissions were compiled and categorized into a written list by a CEA representative (1T83; 1T84). The April 1 document is entitled "Davis School Building Concerns" and lists nine subject categories, including "school

administration", "instruction assistant job description", "workday", "CEA concerns" and others. Under each category is a list of various "problems." Some "problems" refer to Yuli, such as "principal's arrogance to staff"; "retaliation on staff members"; "principal targets people who advocate for the children; therefore people are afraid to speak out"; "principal confrontational to staff, parents, and students . . ."; "principal defames staff in front of other staff." Other "problems" target Association representation on matters of discipline, negotiations, etc. (CP-5).

29. On April 19, the CEA (having formed a self-described "focus group" for purposes of addressing Davis School "building concerns,") conducted another meeting at a local and privately owned "Pub" from 4 p.m. to 6 p.m. About 25 CEA members attended, including Nicgorski, Borrelli and Carter (1T90; 1T91; 2T147; 3T19). The subjects listed on "Davis School Building Concerns" were discussed (1T90). Before the meeting adjourned, the attendees agreed to meet again at Davis on April 21 (1T92). On April 21, Nicgorski sent a memorandum to Yuli, advising that "as per contract . . . a CEA meeting will take place on April 22, 2004 in the Davis School library from 3 p.m.- 4 p.m. . ." (1T92; CP-6). Yuli did not appear at Davis School that day. Spencer-Champagne consented to the meeting by the day's end (1T93; 1T95).

I infer that the CEA focus group met on April 22 at 3 p.m. in the library.

A teacher's workday at Davis School extends from 8:30 am to 3:30 pm (2T74). Before April 22, CEA meetings at Davis School had commenced at 3 pm, with administration consent (1T94).

On April 26, Yuli verbally reprimanded Nicgorski for conducting an "unauthorized" CEA meeting four days earlier (1T94). On the same day, Yuli issued a memorandum to Nicgorski, ordering the removal of CEA bulletin board postings from their first floor location across the hall from the auditorium and their relocation to a third floor office (1T96).

On May 10, 2004, Nicgorski posted a memorandum at Davis School announcing a "NJ CEA focus group meeting" that afternoon at "the Pub" from 4 p.m. to 6 p.m. (CP-7; 1T98).

Borrelli testified that she, Nicgorski and Carter were identified as "the Davis three." She testified that the source of the term was ". . . what the administration might have labeled us . . ." (3T19-3T20). Borrelli's testimony is uncorroborated hearsay; I give it little or no weight.

30. On May 13, Raeshell Carter attended a staff meeting in the Davis School auditorium (2T121). Yuli asked Carter and an unspecified number of other teachers to "move over", i.e., change seats, so that they would be in closer physical proximity to the principal. Carter testified that she complied (2T122). She

conceded that ". . . it was cold; the air conditioner was on, but it was really cold on the far right [side of the auditorium]." I infer that Carter did not move to a seat in a still closer available proximity to Yuli. Carter testified:

. . . Ms. Yuli was walking out of the meeting and she said: 'If you people continue to sit over there, I won't give you any information.' And then I looked at her and said: 'Ms. Yuli, are you talking to me'? Because I wasn't sure that she was talking to me.

She looked directly at me and she said, 'Yes, I am talking to you; if you continue to sit over there I am not going to give you any information; you are not going to get anything.'

And then I said, 'I thought this was America, I thought we had freedom of choice; we could sit where we wanted.' [2T122]

On May 13, Carter filed a grievance protesting ". . . being singled out and publicly threatened at a staff meeting by Ms. Yuli." Carter also wrote that Yuli had "violated [her] civil rights" (CP-19).

On May 14, Yuli wrote a letter to Carter, advising that her conduct on the previous day was "unprofessional" and "insubordinate," the latter demonstrated by her "refusal to move upon my request" and her outburst, "I don't care! This is America and I'll sit where I choose!" Yuli wrote that Carter was now ". . . warned that this type of insubordination will not be tolerated. . ." (CP-19(b)).

Also on May 14, Yuli wrote a letter to administrator Gillespie-Walton about Carter's conduct (2T161; CP-20). She wrote a narrative of events at the May 13 meeting and characterized Carter's actions as a "severe display of unprofessional behavior." (CP-20). Yuli also wrote:

It is obvious that Ms. Carter's uncooperative attitude has interfered with her ability to become a master teacher. She remains a mediocre teacher, at best; even after all of the professional development we have provided for the staff this year. She has had issues following the procedures and initiatives implemented this year, since I began as Principal in early September. She also filed two grievances, dated 10/[1]9/03, which were unfounded and denied. Recently on 5/14/04 she filed another grievance directly related to the above-mentioned incident. This will be denied on grounds of insubordination.

A transfer to another building may afford her the opportunity to become more cooperative with a different principal, so she can eventually develop into a better teacher.  
[CP-20]

Yuli issued a copy of her letter to the CEA president (CP-20).

31. Sometime in May, 2004, the CEA conducted a ballot election among the membership. Nancy Kahler is an art teacher employed by the Board and was the election overseer for the CEA. She visited Davis School and was greeted by Borrelli at the entrance (3T20; 3T4; 3T22; 3T23). Kahler reported to the main office and asked to speak with Yuli. Spencer-Champagne told her that Yuli was "unavailable." Kahler gave Spencer-Champagne a



memorandum regarding regulations for the election and asked her to give it to Yuli. Kahler left the building.

Yuli appeared near the building entrance at the top of the outside stairs and said "Are you Ms. Kahler?" Kahler turned to Yuli from a short distance away and said, "Yes." Yuli said: "Well, I don't do memos" and crumpled (what was apparently) the memorandum Kahler delivered, threw it to the ground, turned and walked into the building (3T23).

Yuli testified that she "did not recall" the incident and distinguished that phrase from a denial (3T159). Considering Yuli's affirmative memory of other (and less dramatic) events in this case, I find that Yuli's lack of any memory of this incident is not credible.

32. Sometime in May, Carter served as "poll monitor" and observed balloting by CEA members during her lunch break. Yuli asked her: "What are you doing"?, to which Carter replied, "I'm watching the ballot box" (2T120). Yuli said: "This is just a waste of time. You need to go pick up your children. You should be doing something else." Carter protested to her that she could not leave her "post" and that her lunch period had not expired (2T121). Carter testified that Yuli seemed annoyed and turned and walked away. Yuli did not rebut Carter's testimony. I credit it.

33. On May 21, 2004, the CEA focus group members wore and distributed buttons to Davis School staff (3T25). The buttons or badges depicted stick-figure women and men holding hands in a semi-circle, below which appeared the phrase, "Unity for Equality" in bold letters. Each button was pinned to a small sheet of paper on which was printed the message:

Dear Davis School Staff,

On April 1, 2004, we spoke up for all of us at Davis School. Now each and everyone of us must be heard. Wear this button to show the UNITY of the Davis School staff.

Thank you,  
Davis School Focus Group  
[CP-23]

Borrelli wore a button and walked into the main office. Yuli stood on the other side of a counter separating office employees from visitors or visiting staff (3T25-3T26).

Borrelli testified that Yuli said: ". . . And these buttons, who [is] wearing these buttons? We can't be wearing these buttons. I called downtown. These are not buttons" (3T26). She testified that Yuli reached across the counter and ". . . grab[bed] my button and it came off my shirt" (3T26). Yuli placed the button on the counter top.

Yuli testified that she did not tear off or snatch the button from Borrelli's blouse (3T138). In the absence of other testimony from Yuli on the subject, including testimony about her knowledge of the button(s), her alleged verbal reaction to seeing

them, or the context in which events occurred, I find that Yuli intended to inspect the button on Borrelli's blouse and touched it or pulled it slightly in order to more closely examine it. I do not find that Yuli intended to remove the button from Borrelli's blouse.

34. On May 24, the next business day, Yuli addressed a letter on Davis School stationery to "To whom it may concern" (3T176; R-6). She testified that the letter was "probably" sent to Gillespie-Walton. Yuli wrote:

We are asking that the following staff members be transferred to another building in September.

Karen Borrelli	physical education
Patricia Nicgorski	6th grade teacher
Raeshell Carter	1st grade teacher
Dayna Hinson	P.E. Grade 5-6
Phyllis Wyatt	Instructional Asst.

[R-6]

Yuli testified that on some unspecified date after March 19, she was asked to ". . . limit down to a few people that I felt would be--people that would be better if they had maybe not stayed at Davis because they weren't so in support of the type of change we were trying to bring about in the building" (3T146). I infer that Yuli was asked to reduce from eleven the number of employees she wished to have transferred from Davis (See finding no. 26). No Board representative, including Yuli, testified more specifically about the timing of her letter. I also infer that the purpose or reason for the transfers to which she attested was

her own--in substantially similar phrasing to the rationale she provided for her longer list of proposed transferees in March, 2004. I infer that listed employees Hinson and Wyatt are not CEA representatives. Gillespie-Walton wrote a note to her secretary on Yuli's letter: "Dana, please forward to Ms. Knox and Dr. Reiss," and she initialed and dated it "5/25/04" (3T147; R-6).

Yuli was then asked on direct examination why she requested the transfers. She testified:

Davis School needed to be restructured, reorganized. There needed to be big changes so that we could make the kind of leaps that the State was expecting . . .

I was hired to do that. As the instructional leader, I was there to make the decisions for what the school needed in terms of instruction, staffing and movement within the building. Things needed to be changed so that we could make the changes necessary. And these individuals just seemed not to want to support any decisions ever that were made about student achievement (emphasis added). That was really what we were doing. [3T148]

I again infer that Yuli was the administrative decision-maker about "student achievement," and her phrase is largely undefined in the transcript. Nor are Nicgorski and Borrelli linked to specific instances of interference with "student achievement."

Yuli was also asked on direct examination if Nicgorski's, Borrelli's and Carter's "capacities as union representatives came into your chain of thought in making the determination [to recommend the transfers]." Yuli testified:

No, not really. At times I felt that-- sometimes I felt that they forgot they were really teachers in the building who were there for student achievement, and they always believed every single decision made was something to do with a union problem, which it wasn't. There were no contractual problems; there were no grievances about the contract, so I felt that every decision wasn't always about something to harm union rights or rules. [3T148-3T149]

I infer from Yuli's testimony that "student achievement" is close to a euphemism for or nearly synonymous with her administrative governance at Davis School. I also infer that in Yuli's view, all of her decisions were incorrectly regarded as "union problems" by Carter, Borrelli and Nicgorski. Finally, I infer that Yuli circumscribed a union representative's legitimate role by the existence of "contractual problems," i.e., the pendency of contractual grievances.

35. Assistant Superintendent for Administration and Support Services Reiss testified that sometime in the spring of 2004, "central staff" was informed that a "number" of Camden public schools ". . . needed review in looking at staff and administrators" (3T188). Three "teams" were formed and dispatched separately to Camden High School, Woodrow Wilson School and Davis Elementary School. Reiss testified that the team sent to Davis was comprised of ". . . administrators of the central office; they were not connected in any way with Davis School or any school that we evaluated" (3T189). He testified

that the team "reported back" to Assistant Superintendent Gillespie-Walton that ". . . there were indeed problems in the school with regard to support of the changes that need[ed] to be made, and made recommendations that we move forward with restructuring the school" (3T189). No document or written "recommendation" by any team was proffered. I cannot infer from Reiss's testimony the meaning of "problems with regard to support of the changes."

Reiss testified that Gillespie-Walton gave him ". . . three names of individuals who needed to be transferred. I then took it upon myself to move forward with the superintendent using the involuntary transfer clause of the union contract"<sup>4/</sup> (3T189-3T190; 3T191). Reiss testified that his recommendation to the superintendent was:

. . . based upon the committee's recommendations made to the assistant superintendent [Gillespie-Walton], plus my own observations of the school that the names given to me were not inconsistent with what I saw in the times I was called over there.  
[3T190]

Reiss denied knowing that "the three individuals" were union representatives (3T190).

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<sup>4/</sup> Article XXXI, "Transfers and Reassignments," sections C, D and E provide mandatory notice and a list of vacancies to involuntarily transferred teachers (C, D). Such transferees are not reduced in rank or compensation (E) (C-3).

Reiss testified about his one visit to Davis School on February 3, 2004. Nothing in the record indicates visit(s) on other occasions. I also do not credit Reiss's testimony to the extent he denies knowing that Borrelli was a CEA representative. Borrelli spoke of Association concerns at the January 29 public Board meeting and I have inferred that Yuli reported her remarks to Reiss (finding no. 21).

On cross-examination, Reiss conceded that the August 10, 2004 "Report of the Superintendent for Special Meeting" attributes the transfers of Borrelli, Carter and Nicgorski to the "principal's request" (3T191). I infer that the principal was Yuli. Reiss did not testimonially reconcile the discrepancy between his stated or implied involvement in the transfer recommendation and the attribution to Principal Yuli set forth in the August 10 document.

The Superintendent's August 10 report lists the names of 19 unit employees--mostly teachers--together with their current titles and school assignments and their recommended transferred titles and school assignments (CP-12). Next to all but two names are one, two or three (or the combination of one and two) asterisks, the key for which is: three asterisks (\*\*\*)-"administrative request"; two asterisks (\*\*)-"principal's request"; and one asterisk (\*)-"staff request." I infer that a "staff request" (\*) is voluntary and does not become involuntary

when coupled with a "principal's request" (\*\*). Two asterisks (\*\*)-"principal's request"-appear next to Nicgorski's, Borrelli's and Carter's names. I infer that the absence of "administrative request" (\*\*\*) designations alongside their names further undermines Reiss's testimony to the effect that he or a "team" recommended their transfers. The report provides that Carter was to be transferred to Parkside School; Borrelli, to Sharp School; and Nicgorski, to East Camden Middle School (CP-12).

The record shows that on May 25, 2004, Gillespie-Walton handwrote a note to her secretary on Yuli's list of five recommended involuntary transferees. She wrote that the document should be forwarded to Reiss and Superintendent Knox. (See finding no. 34). I infer that Reiss received a copy of Yuli's list; in this regard, Gillespie-Walton gave Reiss five names and not three, as he testified. Reiss did not testify that Yuli's May 24 list of five was further reduced to three, pursuant to any administrative decision, discussion or recommendation by a "team" of administrators. Nor did Yuli testify that she was aware of a 2003-04 Board "team" report on Davis School "restructuring." To the extent that Reiss's testimony implies that a team of central staff administrators participated in the selection of possible transferees, I do not credit it.

I also draw a negative factual inference from the Board's failure to explain why employees Hinson and Wyatt (included in



Yuli's May 24 list) were evidently not transferred (A neutral inference could be that they quit or retired from the Board). I note that Gillespie-Walton did not testify. I infer that after May 24, Yuli conveyed to Gillespie-Walton or to Reiss directly that Nicgorski, Borrelli and Carter were most strongly recommended or recommended exclusively for involuntary transfer. They were the only Davis School teachers listed for transfer in the Superintendent's August 10 report (CP-12).

36. On May 26, Raeshell Carter sent a letter to Yuli, replying to the Principal's May 14 written warning (see finding no. 30). Carter wrote that the warning was "written in retaliation to the grievance I wrote" (CP-19c). She continued:

Please note that I wasn't the only teacher who was asked to move. However, because I spoke up for my rights, I am being singled out by you again . . . I feel as though insubordination could only be justified if you had given me a directive . . . I am not in agreement with your warning letter and it must be stricken from my personnel file immediately.

[CP-19c]

37. On June 1, 2004, Nicgorski issued a nine-page memorandum to Superintendent Knox regarding "Administrative concerns--child safety, certification irregularities, etc." Nicgorski identified herself on the document as "Davis SLC Chairperson" (CP-8; 1T101). The memorandum depicts a graphical "pie" cut into six equally-sized pieces labeled "student abuse"; "DYFS irregularities"; "certification irregularities"; "SLC

abuse"; "staff abuse"; and "too varied to categorize." Each piece is described at length in the memorandum.

Nicgorski wrote in a pertinent part that Yuli has "threatened" staff, particularly by "screaming at teachers and staff and speaks in a degrading manner"; threatening transfers and "negating salary increases"; subjected staff to "peer ridicule"; changed personnel job descriptions without notice, etc. She also wrote about physical abuse of students; lack of compliance with SLC regulations, etc. Nicgorski wrote and testified about one incident in which Spencer-Champagne allegedly "stopped a nurse from generating a [physical abuse] incident report" (CP-8; 1T106). Nicgorski conceded in testimony that she was unaware of any unit employee whose increment was withheld in the 2003-04 school year (2T80).

38. On June 4, 2004, Yuli handwrote entries on an "Annual performance report for tenured teaching staff" form as Nicgorski's "evaluator" (3T169; CP-9). After ascribing her "teaching procedures" and "management [skills]" as "satisfactory," Yuli wrote about Nicgorski's "personal and professional qualifications":

Ms. Nicgorski engaged in union activities that hindered and interfered with her professional growth and focus on overall student academic achievement. [CP-9]

Yuli conceded on cross-examination that she viewed Nicgorski's union activities ". . . as not supportive of what the changes

were that were necessary in the building" (3T168). She did not testify specifically about how Nicgorski's union activities interfered with "her professional growth or focus on overall student academic achievement." Yuli wrote on the form that Nicgorski's overall evaluation was "satisfactory" (the other printed option was "unsatisfactory") (CP-9). Nicgorski reviewed the completed form on June 18, 2004.

On June 21, 2004, CEA president Gordon wrote a letter to Yuli on CEA letterhead requesting that she ". . . reconsider the annual report for Ms. Patricia Nicgorski. . . . [Y]ou made mention of union activity and this is not acceptable" (CP-10).

On or about June 24, Yuli completed another performance report for Nicgorski, deleting the offending sentence and substituting the word, "satisfactory" (CP-11). Asked on cross-examination if she "changed it based upon your recognition that it was improper," Yuli testified: "It was changed. [I]f it wasn't properly put on the paper, yes" (3T169). I infer from Yuli's testimony that she did not believe that her original assessment, substantively, was wrong; she recognized that the written representation was problematic.

Nicgorski signed the second version on June 24 with the understanding that it would replace the first completed form (2T5). Yuli admitted that she "was supposed to change it and hand a new one to Ms. Nicgorski" (3T170).

The parties stipulated that the form first completed on June 4 was not expunged from Nicgorski's personnel file (2T7). Yuli testified that she "did not know why [the initial evaluation] was not removed [from her file]" (3T171). Yuli did not testify that she directed the expungement of the June 4 evaluation.

39. Sometime before June 2004, Davis Elementary School received improved scores over the preceding year in teaching language arts literacy (3T114). Sometime in the 2004-05 school year, Davis School was assessed for about one week by a team of former superintendents, consultants and others hired by the State. The team reported scores (1-3, in ascending order of performance) in over 90 categories. Davis received many "3's" and "2's" (3T115). Yuli received a high commendation in "instructional leadership" (3T116).

40. On July 20, 2004 and August 3, 2004, Reiss sent Nicgorski letters advising that in the upcoming Board meeting, the Board will ". . . consider action that will impact upon your employment status." The letters further advised that Nicgorski had the right "to have the discussion in public if she desired" (CP-15; CP-16). On August 3, Reiss issued a similar notice letter to Borrelli (CP-24(b)). Both August 3 letters advise that the Board's "consideration on action" will occur on August 10 (CP-16; CP-24(b)).

41. On August 10, 2004, Superintendent Knox explained to the Board in its public session justifications for transferring Borrelli and Nicgorski. I infer that they (but not Carter) requested "public discussion" at the meeting. The parties stipulated the pertinent transcript portion of the Board meeting (3T2-3T4; C-4).

Knox presented the Board various and often unspecified documents and told it that their transfers were ". . . for the good of the school and for the [good of the] district." She recounted the matter of Borrelli's solicitation of Board approval for the hockey team trip to Parsippany to partake in Special Olympics competition, highlighting the facts that none of the students on the team were Davis School pupils and that ". . . Davis money [was used] to support the trip." Knox also recounted to Board members that (according to an unspecified letter), Borrelli ". . . interrupted the instructional period to tell the children that the [Valentine's Day] dance was cancelled because it was too risqué and that the students were informed that they should write letters to the principal to protest the decision."

Knox also said that Borrelli had asked Yuli to "investigate one of her colleagues" and [caused] "students to distribute some materials in the school." When pressed for details regarding the nature of the "materials," Knox replied "Just materials." Knox continued:

I have here also a memo from Ms. Borrelli to [Yuli] where [Yuli] was admonished for a series of things by Ms. Borrelli, and the letter was sent to people in the NJEA, I guess, to me, to [Board President] Freeman, to assistant superintendents and others [in the union] . . . I have here a letter that was written at a secret meeting, allegedly at a secret meeting at the Pub and it was given to the staff or to [Yuli] by someone who attended the meeting. And, it's a list of grievances against the principal. [C-4, pages 8-9]

I infer that the "memo" to which Knox referred set forth complaints about certain matters at Davis Elementary School, including terms and conditions of employment.

Knox next reported a "a series of memos that were written to [Yuli] by Ms. Nicgorski . . ." She said:

I have here this particular document that was sent to me where Ms. Nicgorski outlined what she considered to be some concerns that they [NJEA or CEA] had in the school. So, one of the things that really struck my attention was that Nicgorski had documents that [Yuli] said were locked in her office relative to her certification that had confidential information, such as [Yuli's] social security number . . . Yuli said that these documents were stolen from her desk and when I received them, there were some names on the side that had been crossed off, but they could be read . . . [C-4, p. 10]

Knox next recounted circumstances of the summer 2003 interview process for Davis School principal in which, ". . . there was a concern by people in the Davis School about the placement of Ms.

Yuli before she even arrived at the school" (C-4, p. 12). Knox concluded her presentation:

And my recommendation for the good of the school is that the two persons that we recommend--the three people we recommend be removed. And I'm not discussing the third person because they're not here, and they didn't ask to have their information discussed in public . . . A lot of the documentation was generated through their own hand. [C-4, p. 12]

Superintendent Knox next answered questions posed by Board members. Replying to a question asking what document was "stolen" from Yuli's office, Knox identified a letter dated February 26, 2004 from the State Department of Education.<sup>5/</sup>

Knox next spoke of a "letter" or "package" setting forth guidelines for a "teacher of the year" election that Yuli should have received and did not. "Yet Ms. Borrelli had the package and Ms. Borrelli was voted as the teacher of the year of the school," she added, along with many other details.

Knox was also asked about the circumstances of the February 2004 Special Olympics "Davis Dragons" hockey team trip to Parsippany. She said that the Board had "voted to send students from Davis" but a newspaper reported that the team represented "Lindenwald." Knox also read aloud Reiss's February 3 letter to

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<sup>5/</sup> No Board representative testified about circumstances of an allegedly "stolen" document. Nicgorski testified that she did not remove the document from Yuli's office (1T115). I do not find that any document was pilfered from Yuli's office.

Borrelli (see finding no. 20), which concluded that she solicited student protest letters regarding the cancelled Valentine's Day dance (C-4, p. 24).

Board member Freeman asked Knox about ". . . the rationale for teachers . . . moving in this direction to cause what appears to be confusion and even sabotage and perhaps some other more serious things if we're talking about removing unauthorized documents from a principal's office" (C-4, p. 28). Knox refused to speculate about motives and said: "A lot of things happening in that school are really disruptive to an effective instructional process . . ."

Knox said that "Davis School is almost in a state of hysteria this whole year and in years passed because it has not been a stable situation" (C-4, p. 30).

The entire Board voted and approved the transfers (C-4).

#### ANALYSIS

The issue in this matter is whether the Camden Board of Education unlawfully transferred teachers Nicgorski, Borrelli and Carter out of Davis Elementary School in retaliation for activities protected by the Act. In re Bridgewater Tp., 95 N.J. 244 (1984), sets forth the elements that a charging party must prove to establish a violation of 5.4a(3).

Under Bridgewater, no violation will be found unless the charging party has proved, by a preponderance of the evidence on



the entire record, that protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct evidence or by circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity and the employer was hostile toward the exercise of the protected rights Id. at 246.

If the employer does not present any evidence of a motive not illegal under the Act or if its explanation has been rejected as pretextual, there is sufficient basis for finding a violation without further analysis. Sometimes, however, the record demonstrates that both unlawful motives and other motives contributed to a personnel action. In these dual motive cases, the employer will not have violated the Act if it can prove, by a preponderance of evidence on the entire record, that the adverse action would have taken place absent the protected conduct. Id. at 242. This affirmative defense, however, need not be considered unless the charging party has proven, on the record as a whole, that union animus was a motivating or substantial reason for the personnel action.

I find that the CEA has proved by a preponderance of evidence that Nicgorski's, Borrelli's and Carter's protected activities were a substantial or motivating factor in the Board's decision to transfer them out of Davis Elementary School. Direct and circumstantial evidence demonstrate that anti-union animus

motivated Principal Yuli's recommendations and Superintendent Knox's public presentation to the Board, upon which two of the three disputed employment actions were approved.

In February 2004, Yuli threatened Nicgorski and Borrelli with "trouble" if they persisted in their "alignment." I have found that Yuli was referring to their Association activities and not to any cooperative student teaching they may have performed. In her remarks to Nicgorski, Yuli also disclaimed her ability to be "objective" about Borrelli. Yuli recommended Nicgorski's, Borrelli's and Carter's transfers in March, 2004 and again in May. In an August 10, 2004 presentation to the Board in its public session, Superintendent Knox cited memoranda from both Borrelli and Nicgorski setting forth, respectively, "grievances", and "concerns [of the CEA]" as justifications (among others) for their transfers. In Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981), the Commission explained:

The Board may criticize employee representatives for their conduct. However, it cannot use its power as an employer to convert that criticism into discipline or other adverse action against the individual as an employee when the conduct objected to is unrelated to that individual's performance as an employee. To permit this to occur would be to condone conduct by an employer which would discourage employees engaging in organizational activity. [7 NJPER 504]

Knox's citing of Borrelli's and Nicgorski's writings on behalf of the Association was intended to persuade Board members to approve

their transfers out of Davis School on that date. I find that the Superintendent's use of the documents is direct evidence of employer anti-union animus.

Circumstantial evidence demonstrates that the Board retaliated against Nicgorski, Borrelli and Carter for their protected activities. Association representatives have the right to initiate grievances and pursue complaints, although that right is not without limitation. State of N.J. (Dept. of Human Services), P.E.R.C. No. 2001-52, 27 NJPER 177 (¶32057 2001); Belleville Bd. of Ed., P.E.R.C. No. 89-92, 15 NJPER 161 (¶20068 1989); Middletown Tp. Bd. of Ed., P.E.R.C. No. 86-142, 12 NJPER 521 (¶17194 1986), aff'd. NJPER Supp. 2d 175 (¶155 App. Div. 1987). Association representatives are also "allowed leeway for adversarial and impulsive behavior" in grievance meetings but ". . . such representational conduct may lose its statutory protection if it indefensibly threatens workplace discipline, order and respect." State of New Jersey at 27 NJPER 178.

The Commission recently reviewed the definition of "protected activity," reiterating that it includes individual conduct, such as "complaints, arguments, objections, letters or similar activity--related to enforcing a collective agreement or preserving or protesting working conditions of employees in a recognized or certified unit." State of N.J. (Ofc. of Public Defender), P.E.R.C. No. 2006-11, 31 NJPER 276, 279 (¶109 2005),

citing North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 79-14, 4 NJPER 451, 454 n. 16 (¶4205 1978), aff'd. NJPER Supp.2d 63 (¶45 1979). I recommend that memoranda produced or statements issued by Nicgorski or Borrelli under the aegis of the SLC are "protected" under our Act, at least to the extent that they refer to unit employees' terms and conditions of employment.

The record shows that Borrelli and Nicgorski engaged in numerous activities on behalf of the Association throughout the 2003-04 school year, including grievance investigating and processing; attendance (and participation) at SLC, Board and CEA "Pub" and Davis School meetings; representing unit employees, including instructional assistants, before the Davis School principal and vice-principal regarding disputed terms and conditions of employment; wearing buttons advocating solidarity among unit employees<sup>6/</sup>; and writing memoranda to Board representatives protesting terms and conditions of employment.

The record also shows that Carter filed numerous grievances against Yuli throughout the 2003-04 school year; attended all "CEA focus group" meetings; and in May, 2004, assisted as a poll observer in the CEA-Board "teacher of the year" election, eliciting Yuli's express disapproval.

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<sup>6/</sup> An employer may lawfully prohibit the wearing of union emblems or the like if it has a legitimate and substantial business justification. State of N.J. (Dept. of Corrections), P.E.R.C. No. 97-145, 23 NJPER 388, 389 (¶28176 1997).

Principal Yuli wrote one sentence about Nicgorski in her initial June, 2004 year-end evaluation: "Ms. Nicgorski engaged in union activities that hindered and interfered with her professional growth and focus on overall student academic achievement" (see finding no. 38). Yuli admitted that later that June (after the CEA president complained), she "was supposed" to have removed the evaluation from Nicgorski's personnel file but did not, and gave no reason for her omission. Considered outside the context of its writing, I find that the assessment contravenes the prohibition set forth in Black Horse Pike, and violates 5.4a(1) of the Act. N.J. Sports and Expo. Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979). Considered in the context of other circumstantial evidence in the 2003-04 school year, I find that the assessment shows animus.

On March 18, 2004, Yuli summoned CEA building representatives to her office and angrily informed Nicgorski and Borrelli that they were no longer "in control" of the building and accused them of "hurting the children", apparently without explanation. On the next day, March 19, Yuli issued a memorandum to Assistant Superintendent Gillespie-Walton, "strongly recommending" the transfer of eleven named Davis School teachers, the first three of whom listed were Nicgorski, Borrelli and Carter. Similarly, on May 21, 2004, Yuli criticized Borrelli for wearing a CEA button and then (unintentionally) removed it from

the representative's blouse while they stood in the Davis School administrative office. On the next business day, May 24, Yuli issued a memorandum to Gillespie-Walton, requesting the transfer of five "staff members" to "another building"; the first three listed were Borrelli, Nicgorski and Carter. Yuli testified that she recommended the transfers because "the individuals just seemed not to want to support any decisions ever that were made about student achievement." Yuli's testimony is vague and does not explain the memorandum's timing.

Timing is an important factor in assessing motivation. Downe Tp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3 (¶17002 1985). In March and May 2004, Yuli reacted swiftly to her disputes with CEA representatives by recommending the transfer of all three out of Davis School. I find animus in her conduct.

On March 26, 2004, Yuli issued a reprimand to Nicgorski arising from the CEA building representative's March 23 brief discussion with an instructional assistant, confirming that no certificated employee was present in the "detention" classroom with her and the students. Yuli wrote: "I remind you that as a CEA rep at Davis School, you are here to represent staff in a disciplinary conference or when I have violated their contract" (finding no. 27). Yuli had contemporaneously remarked to Nicgorski that she could represent employees ". . . only when they come to you" and was prohibited from ". . . seeking out

[contract] violations." While Yuli's comments and written reprimand too narrowly circumscribe the ambit of "protected activity", they provide a context of animus for her initial June, 2004 year-end written evaluation of Nicgorski. In other words, I infer that Yuli meant that any of Nicgorski's protected activities falling outside of the pinched definition set forth in her March, 2004 reprimand(s), (and in her testimony; see finding no. 34, p. 44) automatically ". . . hindered and interfered with [Nicgorski's] professional growth and focus on overall student academic achievement." In her testimony, Yuli neither explained nor specifically provided an instance of how Nicgorski's union activities "interfered" with her "professional growth" or with her "focus on overall student academic achievement." Yuli's June 4, 2004 written assessment of Nicgorski reveals anti-union animus.

On May 14, Yuli issued a written reprimand to Carter for her insubordinate conduct on the previous day and a letter to Gillespie-Walton, recounting details leading to the reprimand and recommending Carter's transfer out of Davis School because of her "uncooperative attitude." Yuli ascribed that attitude to Carter's lack of improvement as a teacher; her "issues" in following "procedures" and "initiatives" implemented in 2003-04; and her filing of two grievances in October, 1993 and a third,

filed the previous day. (The record shows that Carter filed many grievances in the 2003-04 school year).

Yuli first "proposed" a transfer to Carter at the start of the school year when the teacher complained of having been reassigned to a different room or class from the previous term. Yuli told Carter that if she did not like her assignment she could transfer to a different school.

Yuli first recommended Carter's transfer in a letter to Gillespie-Walton on March 19, 2004, the day after the principal confronted CEA building representatives Nicgorski and Borrelli in her office. In the absence of any contemporaneous or near-contemporaneous employment-related matters between Yuli and Carter, I infer that Yuli recommended Carter's transfer on March 19 because she associated Carter with Nicgorski and Borrelli, an association rooted in grievances or complaints about terms and conditions of employment. Despite the fact that Yuli also recommended eight others for transfer in her March 19 letter, the three representatives were grouped together first on the list. Their grouping might be less suspicious had Yuli not grouped them together first again in her May 2004 letter to Gillespie-Walton recommending five unit employees for transfer from Davis. (I have inferred that sometime after May 24, 2004, Yuli recommended the transfers of Carter, Borrelli and Nicgorski exclusively or more strongly than others). That Yuli's May 14 letter identifies



grievances Carter filed in the previous October as evidence of an "uncooperative attitude" confirms a continuing animus against Carter for her filings.

Finally, the record reveals other circumstantial evidence of animus or employer conduct tending to interfere with protected rights. For example, on February 3, 2004, Assistant Superintendent Reiss told Borrelli in a meeting attended by Yuli and the CEA president, among others, that in light of her complaints [on behalf of the Association] to the Board in its recent public session, she should consider transferring to another school (See finding no. 21). On April 26, 2004, Yuli reprimanded Nicgorski for conducting an "unauthorized" CEA meeting at Davis School four days earlier; Vice-principal Spencer-Champagne had already consented to Nicgorski's request to hold the meeting. On the same date, Yuli unilaterally and without notice or explanation to the CEA ordered the removal of the CEA bulletin board postings from their first floor location and relocation to a third floor office. In May, 2004, Yuli provocatively crumpled and threw to the ground a memorandum written and hand-delivered by a CEA representative in the representative's presence. Upon verifying the representative's identity, Yuli dismissively announced: "I don't do memos" (See finding no. 31). These uncontested events circumstantially show

the Board's, and particularly Yuli's combative posture towards the Association in second half of the school year.

The Board contends that Yuli was hired to improve Davis School's low performance scores, pursuant to Abbott assessments. The Board maintains that Yuli "needed to make significant changes to the structure and organization of the school," including "transferring employees who were not cooperating with her management of the school" (brief at p. 12).

The Board asserts that Borrelli was uncooperative by seeking permission and funds for the trip to Parsippany (Special Olympics) when ". . . not one child from the Davis School was going to attend the trip" (brief at 13). The Board argues that the trip would neither benefit Davis students nor improve the school's performance. Borrelli was also assertedly uncooperative in the matter of the cancelled Valentine's Day dance. "According to Ms. Yuli . . . the students told her that Ms. Borrelli told them of the cancellation" (brief at 14).

The Board asserts that Nicgorski was "insubordinate" in March, 2003, when she asked an instructional assistant why she "was alone in the detention room" (brief at 15; see finding no. 27). Nicgorski assertedly ". . . took on a supervisory role that was not part of her job duties." Nicgorski also once scheduled a focus group meeting for 3 p.m. at Davis School, the "effect" of which "stopped teachers from doing school-related work" (Davis

School teacher workday extends from 8:30 a.m. to 3:30 p.m.). Nicgorski's action was "counter to [the] objective of increasing performance of the school."

I disagree that the Board has proved that it would have transferred Nicgorski in the absence of her protected activities. The facts do not support the Board's contention that Nicgorski's scheduling of a CEA meeting at 3 p.m. on April 22, 2004 "hindered the performance of the school." Unrebutted evidence demonstrated that previous CEA meetings at Davis commenced at 3 p.m., with Board consent, and that Vice-Principal Spencer-Champagne specifically consented to the 3 p.m. April 22 meeting in Yuli's absence. Nor do the facts prove that Nicgorski had taken a "supervisory role" by questioning an instructional assistant in a classroom of detained students on the whereabouts of a certificated employee. On March 23, 2004, Nicgorski did not suggest or direct that instructional assistant Patrick do anything. Their verbal exchange was brief and no facts suggest that the classroom of detained students was disrupted. Nicgorski was concerned that non-certificated employees given de facto supervision of students implicated matters of compensation and security. Employees have a protected interest in presenting views on matters that effect them as employees even if such matters are neither arbitrable nor mandatorily negotiable.

Bernards Tp. Bd. of Ed. v. Bernards Tp. Ed. Ass'n., 29 N.J. 311 (1979).

Yuli's written reprimand to Nicgorski shows that the principal was angered by Nicgorski's inquiry of Patrick, which exceeded (in her view) the legitimate role of a union representative. Nicgorski's conduct was protected under our Act.

I also disagree that the Board would have transferred Borrelli in the absence of her protected activities. Borrelli was not forthcoming in securing Board consent to underwrite the costs of the hockey team trip to Parsippany; she did not disclose to Reiss or Yuli that none of the team members were current Davis School students. She accurately recorded on the request form that students in grades four to eleven were participating. Assistant Superintendent Reiss testified that he believed her entry was a "typo" but did not ask about it when he returned the form to her to obtain Yuli's signature in the allocated space. Reiss ultimately approved the (privately underwritten) overnight trip and the payment of Borrelli's salary for her attendance as coach and chaperone.

In February 2004, Borrelli advised students in Nicgorski's classroom to stop selling dance tickets because Yuli cancelled the dance. I have also found that she probably told students that Yuli mentioned that they danced too provocatively and that

they could write letters to Yuli protesting her decision. Yuli advised students of the cancelled dance on the next school day.

Both instances do not prove by a preponderance of evidence on the entire record that the Board would have transferred Borrelli from Davis to another school in the absence of her protected activities. At the time of their occurrences (February 2004), neither matter appeared especially egregious to the Board; the trip was permitted (soon after it was "cancelled") and the Board paid Borrelli to chaperone and coach the hockey team; and Borrelli's announced cancellation of the dance merely preceded Yuli's (albeit without the principal's explicit authorization). The cited instances more strongly suggest an effort to justify the decision to transfer Borrelli, of whom Yuli was admittedly incapable of "objectiv[ity]." Even if the Board considered both instances in earnest, I find that their overall weight is much less than the weight of evidence of anti-union animus on this record.

Finally, I find that the Board proved that it would have transferred Carter, even in the absence of her protected activities, which were comprised almost entirely of grievance filings on her own behalf. Yuli was charged with and committed to improving Davis School's performance. Early in the school year, she personally observed Carter teach several class periods and was critical of her performance. Yuli's dissatisfaction was

apparently unabated because she wrote to Assistant Superintendent Gillespie-Walton in May, 2004: "[Carter] remains a mediocre teacher, at best, even after all of the professional development we have provided to the staff this year."

In the letter, Yuli also wrote that Carter had an "uncooperative attitude." The Commission has observed: ". . . [T]he 'lack of cooperation' justification is often a pretext for anti-union discrimination." Middletown Tp. Bd. of Ed. at 12 NJPER 522.

I have inferred that Yuli's March 2004 recommendation to transfer Carter was tainted by anti-union animus because the Principal associated Carter with Nicgorski and Borrelli. Yuli's letter two months later was occasioned by Carter's actual or perceived insubordination in the presence of her peers on the previous day in the school auditorium (See finding no. 30).

The Association asserts that Yuli's letter to Gillespie-Walton was sent in retaliation for Carter's May 13 grievance protesting the incident in the auditorium. I disagree and find that Yuli's letter is predominantly concerned with a recitation of the previous day's incident; Carter's "insubordination" segued to a description of her "uncooperative attitude [that] interfered with her ability to become a master teacher." In that context, I do not find that Carter's "uncooperative attitude" is akin to a pretextual "lack of cooperation justification." I recommend that

the Commission dismiss the portion of the Complaint alleging that Carter was transferred in violation of 5.4a(3) of the Act.

RECOMMENDED ORDER

I recommend that the Camden Board of Education:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., particularly by threatening to transfer CEA representative Borrelli for speaking out about terms and conditions of employment at a public Board meeting; threatening CEA representatives if they continued their alignment; threatening and reprimanding CEA representative Nicgorski for asking unit employees about terms and conditions of employment; ordering the removal of CEA bulletin board postings from their first floor location and their relocation to a third floor office; discouraging CEA representative Carter from performing CEA-sponsored poll monitoring during her lunch period; and recommending the transfer of CEA representatives Nicgorski and Borrelli based in part on documents they authored to protest terms and conditions of employment.

2. Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to

them by the Act, particularly by reprimanding CEA representative Nicgorski for checking on a unit employee regarding a term and condition of employment; reprimanding CEA representative Nicgorski in her year-end performance evaluation for engaging in union activities; transferring CEA representative Nicgorski from Davis Elementary School to another Board school; and transferring CEA representative Borrelli from Davis Elementary School to another Board school.

B. Take the following affirmative action:

1. Remove the March 26, 2004 reprimand and June 4, 2004 performance report from Patricia Nicgorski's personnel file.

2. Relocate CEA bulletin board postings from the third floor of Davis Elementary School to their first floor location on and before April 26, 2004.

3. Transfer Patricia Nicgorski to Davis Elementary School to the position in which she was employed before August 10, 2004.

4. Transfer Karen Borrelli to Davis Elementary School to the position in which she was employed before August 10, 2004.

5. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix A. Copies of such notice shall, after being signed by



the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

6. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

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Jonathan Roth  
Hearing Examiner

DATED: June 21, 2006  
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by July 5, 2006.



RECOMMENDED



# NOTICE TO EMPLOYEES

## PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF THE NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT, AS AMENDED,

**We hereby notify our employees that:**

**WE WILL** cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., particularly by threatening to transfer CEA representative Borrelli for speaking out about terms and conditions of employment at a public Board meeting; threatening CEA representatives if they continue their alignment; threatening and reprimanding CEA representative Nicgorski for asking unit employees about terms and conditions of employment; ordering the removal of CEA bulletin board postings from their first floor location and their relocation to a third floor office; discouraging CEA representative Carter from performing CEA-sponsored poll monitoring during her lunch period; and recommending the transfer of CEA representatives Nicgorski and Borrelli based in part on documents they authored to protest terms and conditions of employment.

**WE WILL** cease and desist from discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by the Act, particularly by reprimanding CEA representative Nicgorski for checking on a unit employee regarding a term and condition of employment; reprimanding CEA representative Nicgorski in her year-end performance evaluation for engaging in union activities; transferring CEA representative Nicgorski from Davis Elementary School to another Board school; and transferring CEA representative Borrelli from Davis Elementary School to another Board school.

**WE WILL** remove the March 26, 2004 reprimand and June 4, 2004 performance report from Patricia Nicgorski's personnel file.

**WE WILL** relocate CEA bulletin board postings from the third floor of Davis Elementary School to their first floor location on and before April 26, 2004.

**WE WILL** transfer Patricia Nicgorski to Davis Elementary School to the position in which she was employed before August 10, 2004.

**WE WILL** transfer Karen Borrelli to Davis Elementary School to the position in which she was employed before August 10, 2004.

Docket No. CO-2005-73

Camden Board of Education  
(Public Employer)

Date: \_\_\_\_\_

By: \_\_\_\_\_

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, PO Box 429, Trenton, NJ 08625-0429 (609) 984-7372